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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. RICKY WHITE, Defendant and Appellant.	B199510 (Los Angeles County Super. Ct. No. BA298229)

APPEAL from a judgment of the Superior Court of Los Angeles County, Nancy L. Newman, Judge. Reversed and remanded with directions.

David L. Polsky, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Paul M. Roadarmel, Jr., and Nancy G. James, Deputy Attorneys General, for Plaintiff and Respondent.

Ricky White appeals from the judgment entered following his conviction by jury of selling or furnishing a controlled substance (Health & Saf. Code, § 11352, subd. (a)), having suffered a prior felony conviction (Pen. Code, § 667, subd. (a)) and two prior felony convictions for which he served separate prison terms (Pen. Code, § 667.5, subd. (b)). The court sentenced appellant to prison for eight years. We reverse the judgment and remand the matter with directions.

FACTUAL SUMMARY

1. *People's Evidence.*

Viewed in accordance with the usual rules on appeal (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence, the sufficiency of which is undisputed, established that on February 16, 2006, Los Angeles Police Officers Eliana Tapia and Fabiola Ledesma were assigned to Central Division Narcotics. Tapia and Ledesma were in an observation post conducting narcotics surveillance in the area of Fifth between San Pedro and Towne. If Tapia and Ledesma saw what they believed was a narcotics transaction, they would notify "chase" officers who would detain the suspect(s).

About 2:30 p.m., Tapia and Ledesma saw appellant standing just west of a hotel entrance. Using binoculars, the officers saw Cassandra Aderigibhe approach appellant and give him paper currency. Appellant put the money in his pocket. Appellant then opened his left hand, revealing a clear plastic bindle containing off-white solids which the officers believed were narcotics. Appellant had a black plastic bag in his right hand. Appellant, using his right hand, took some of the solids from his left hand and placed them in Aderigibhe's left hand. Aderigibhe examined the substances, closed her hand, and walked away. Appellant, still holding the clear plastic bindle and the black plastic bag, later walked away in a different direction. Tapia and Ledesma notified the chase officers to detain Aderigibhe and appellant. Los Angeles Police Officers Christopher Green and Robin Gonzalez detained Aderigibhe and recovered from her .08 grams net weight of cocaine base.

Tapia continued to watch appellant until he walked behind a truck. Uniformed Los Angeles Police Officers George Mejia and Christopher Hoffman went to the area.

Appellant was the only person in the area who fit the broadcast description of the narcotics seller. Mejia testified that appellant saw the officers approaching, then discarded the black plastic bag onto the sidewalk. Gonzalez, who also saw appellant do this, retrieved the bag. It contained currency in numerous small denominations.

Mejia and Hoffman detained and searched appellant. Mejia recovered 2.53 grams net weight of cocaine base from appellant's left hand and $25 from his left pants pocket. Hoffman recovered $19 from appellant's right front pants pocket.

2. *Defense Evidence.*

In defense, appellant testified as follows. Appellant was at Fifth and Main with his wife. He went across the street to get tickets for a concert. Appellant was not selling drugs. Mejia and Hoffman detained appellant. Mejia bent appellant's left thumb back and put drugs in appellant's hand. Appellant never had a black plastic bag. He suggested at trial that police planted the black plastic bag on him at the police station.

Edward Hall, who had suffered numerous convictions, testified as follows. Hoffman, Green, Mejia, and Brown were part of an organization of officers that framed people, fabricated evidence, and committed perjury on a regular basis.

As to the incident underlying Hall's 2006 conviction, Mejia falsely testified in that proceeding that, using binoculars, he saw Hall conduct a narcotics transaction at Fifth and Main. Mejia caused Green to detain Hall. Mejia repeatedly ordered Green to search Hall and, although Green did not find narcotics on Hall, Mejia told Green to take Hall to the police station. Evidence was planted on Hall, and Mejia fabricated the police report. Mejia, Brown, and Hoffman testified against Hall at his trial. Green refused to appear at Hall's trial. Hall was wrongly convicted in that matter.

Troy Gray, who had suffered numerous convictions, testified as follows. Tapia, Ledesma, and Green had been known to lie and plant drugs. As to the incident underlying Gray's 2007 conviction, Gray was arrested on Fifth and Crocker in October 2005. Tapia and Ledesma were present, although they were not the arresting officers. Gray was illegally detained and searched as a result of orders given by Tapia and

Ledesma. The arresting officers planted drugs on Gray. Gray was in custody at the time of appellant's arrest in the present case.

3. *Rebuttal Evidence.*

In rebuttal, Mejia testified that in July 2005, he, using binoculars, saw Hall standing on Fifth and Main with a female. Two males approached Hall and the female. Hall appeared to sell cocaine base to one of the males, and Hall gave the money to the female.

CONTENTION

Appellant claims the trial court erred by denying his *Pitches*s motion. He also requests that this Court review the trial court's in camera hearing regarding whether the official information privilege precluded disclosure of the police observation post in this case.

DISCUSSION

1. *The Trial Court Partially Erred by Denying Appellant's Pitchess Motion and Remand Is Appropriate.*

a. *Pertinent Facts.*

On May 5, 2006, appellant, in pro. per., filed a pretrial discovery motion pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).[1] The motion sought an order requiring, inter alia, the Los Angeles Police Department to make available all complaints relating to acts of racial bias, gender bias, ethnic bias, sexual orientation bias, coercive conduct, or a violation(s) of constitutional rights. The motion also sought complaints relating to fabrication of charges, fabrication of evidence, fabrication of reasonable suspicion and/or probable cause, illegal search and seizure, false arrest, perjury, dishonesty, writing of false police reports, and planting of evidence. The motion further sought complaints relating to false or misleading internal reports, including medical reports, and any other evidence of misconduct amounting to moral turpitude.

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1 The top of the first page of the motion reflects it was from "[appellant] [¶] 8931186/NCCF-923-6u [¶] 29300 The Old Road [¶] Castaic, California 91834."

The motion sought the above information from the personnel files of the following named officers: Tapia, Ledesma, Mejia, Gonzalez, Hoffman, Green, Brown, Chapman, Reyes, Pozo, Luna, Feldtz, and Hodges. The motion also sought related documents and information. Appellant supported the motion with his declaration executed May 4, 2006, and with portions of the police report as discussed below. On June 1, 2006, the People filed an opposition to appellant's motion. The People did not cite as a ground for opposition that appellant's declaration did not satisfy the requirements of Code of Civil Procedure section 2015.5.

(1) *The Police Report*.

On June 7, 2006, appellant filed a supplement to his discovery motion. The supplement contained two pages of a police report. The first page was a page from the arrest report. The second page was a page from the property report. We will refer to these as the arrest and property reports, respectively.

The arrest report indicates Tapia wrote it. Tapia stated as follows. About 2:30 p.m. on February 16, 2006, "Dets" Hodges, Feldtz, and Luna , and "Ofcrs" Pozo, Reyes, Chapman, Brown, Ledesma, "and I (Ofcr. Tapia . . .)" were assigned to Narcotics Division Central. Tapia wrote that "[w]e" were working with Central East Side Detail Officers Green, Mejia, Gonzalez, Hoffman and Sergeant Daigle, and "[w]e" were conducting a narcotics task force in the area of Fifth and Crocker. Tapia also wrote that the area was known to officers for its blatant narcotics street sales and use, and Tapia and Ledesma placed themselves in a position of advantage to monitor the above location.

In the investigation section of the arrest report, Tapia wrote that, "[w]e" (apparently referring only to Tapia and Ledesma) observed a male (later identified as appellant) holding a black plastic bag in his right hand and standing on the north side of Fifth, just west of the St. Mark's Hotel. Tapia then indicated that appellant sold narcotics to Aderigibhe as indicated in our Factual Summary. Tapia also stated, "[w]e" formed the opinion that a narcotics transaction had occurred between the two.

Tapia then stated, "[w]e" informed the chase officers of Aderigibhe's "location." Green and Gonzalez took Aderigibhe into custody, and Green recovered suspected

narcotics from Aderigibhe, as indicated in our Factual Summary. Tapia wrote, "[w]e" then informed "the remaining officers" of [appellant's] location. Tapia then indicated the following. As "the [officers]" approached appellant, they observed him throw the black plastic bag in his right hand to the ground. Mejia and Hoffman took appellant into custody. Mejia recovered suspected narcotics from appellant, and Gonzalez recovered the black plastic bag, as indicated in our Factual Summary.

(2) *Appellant's Supporting Declaration.*

Appellant supported his *Pitchess* motion with his declaration. The declaration stated the following at the end: "I declare under penalty of perjury that the foregoing is true and correct. Executed on 5/5/06." The declaration was signed by Ricky White as declarant. The declaration did not state the place of execution of the declaration or that it was declared under the laws of the State of California.

The declaration stated concerning the February 16, 2006 incident that "[a]ccording to the arrest report written by . . . Tapia," about 14 officers were executing a narcotics bust operation. The declaration then stated that Tapia and Ledesma alleged the following facts. Tapia and Ledesma saw a Black male wearing a blue jacket and blue pants, and holding a black plastic bag in his right hand. They saw appellant and Aderigibhe engaged in a short conversation.

Aderigibhe handed appellant paper currency from her left hand. Appellant received the currency with his right hand and placed it inside his right front pants pocket. Appellant opened his left hand and exposed a clear plastic bindle with off-white solids resembling rock cocaine. Appellant, using his right hand, removed solids from the bindle in his left hand and placed it on Aderigibhe's left palm. Aderigibhe glanced at the solids on her left palm and walked away westbound. Tapia and Ledesma formed the opinion that a narcotics transaction had occurred between appellant and Aderigibhe. After these events occurred, Ledesma kept Aderigibhe constantly in view. Tapia and Ledesma informed the chase officers of Aderigibhe's location.

The "same officer[s]" directed Green and Gonzalez to Aderigibhe's location where they took her into custody. Green recovered solids resembling rock cocaine from

Aderigibhe's left hand. Tapia and Ledesma then informed the remaining officers of appellant's location.

The declaration then states, "they alleged that they observed [appellant throw] the black plastic bag in his right hand to the ground which [appellant] never had a plastic bag from the start falsifying the police report and planted evidence on [appellant]." (*Sic*.) Green came from another location after appellant was in custody and recovered the black plastic bag from the ground. According to the declaration, "Mejia alleged that he recovered the clear plastic bindle with off-white solids resembling rock cocaine from [appellant's] left hand which they was [*sic*] bending [appellant's] left-thumb to open his hand to plant narcotics on him. Also he went into [appellant's] left front pants pocket and recover[ed] $25." (*Sic*.) Hoffman alleged that he recovered $19 from appellant's right front pants pocket.

The declaration then stated: "The credibility of each of the named officers is very much at issue. . . . The defense expects to show that the description of the events and statement attributed to [appellant] regarding that the officers fabricated the statement and evidence. [*Sic*.] It is my information and belief that these officers regularly engage in dishonest and harassing conduct against him because the . . . area is known to the officers for [its blatant narcotics street sales and usage.] It is my information and belief that these officers falsify the police reports to reflect the fabrication account of what was violation as a result of the search for the purpose of getting him custody or a new arrest, and back to prison." (*Sic*.)

(3) *The Court's Ruling And Additional Information.*

On June 15, 2006, the trial court heard appellant's *Pitchess* motion. The trial court denied it. During jury argument, appellant commented that Hoffman was a good police officer. According to appellant, Hoffman's entire testimony was the truth.

b. *Analysis.*

Appellant claims the trial court erred by denying his *Pitchess* motion. We partially agree.

(1) *Pertinent Law*.

In *Warrick v. Superior Court* (2005) 35 Cal.4th 1011, our Supreme Court observed that, to initiate discovery under a *Pitchess* motion, the defendant must file a motion supported by affidavits showing good cause for the discovery. This means demonstrating the materiality of the information to the pending litigation and stating upon reasonable belief that the police agency has the records or information. This two-part showing is a "'relatively low threshold for discovery.'" (*Id.* at p. 1019.)

Warrick teaches that, to show good cause, defense counsel's affidavit must, inter alia, "describe a factual scenario supporting the claimed officer misconduct. That factual scenario, depending on the circumstances of the case, may consist of a denial of the facts asserted in the police report. . . . [¶] In other cases, the trial court hearing a *Pitchess* motion will have before it defense counsel's affidavit, and in addition a police report, witness statements, or other pertinent documents. The court then determines whether defendant's averments, '[v]iewed in conjunction with the police reports,' and any other documents, suffice to 'establish a plausible factual foundation' for the alleged officer misconduct and to 'articulate a valid theory as to how the information sought might be admissible' at trial. [Citation.] . . . What the defendant must present is a specific factual scenario of officer misconduct that is plausible when read in light of the pertinent documents. [Citations.]" (*Warrick*, *supra*, 35 Cal.4th at pp. 1024-1025.)

The *Warrick* court held that a plausible scenario of officer misconduct is one that might or could have occurred. Such a scenario is plausible because it presents an assertion of specific police misconduct that is both internally consistent and supports the defense proposed to the charges. "A defendant must also show how the information sought could lead to or be evidence potentially admissible at trial. . . . Once that burden is met, the defendant has shown materiality under section 1043." (*Warrick*, *supra*, 35 Cal.4th at p. 1026.)

(2) *Application of the Law to the Present Case.*

(a) *As to Officers Tapia and Ledesma.*

As to Tapia and Ledesma, fairly read, the arrest report indicated that these two officers saw appellant sell narcotics. However, appellant, by his declaration, effectively denied that he sold narcotics, indicating the "events . . . attributed" to him were fabricated, and alleging on information and belief that officers "falsif[ied] the police reports to reflect the fabrication account." (*Sic*.)

(b) *As to the Remaining Officers.*

As to the officers other than Tapia and Ledesma, we note the following. Tapia said in the arrest report that, after Ledesma directed Green and Gonzalez to Aderigibhe's location and the latter two officers took her into custody, "We then informed the remaining officers of [appellant's] location. As the [officers] approached [appellant], they observed him throw the black plastic bag in his right hand to the ground."

The issue is the identity of the "remaining officers" since, whoever they are, Tapia's arrest report, fairly read, indicates that those same officers approached appellant and saw him throw the black plastic bag to the ground.

First, we note the arrest report elsewhere expressly distinguished between *detectives, officers*, and a sergeant. The arrest report indicated the detectives were Hodges, Feldtz, and Luna. The arrest report indicated *officers* did various things, but did not indicate what, if anything, the *detectives* did other than to "work[]" with Central East Side Detail *officers*. That is, fairly read, the term "remaining *officers*" excluded Hodges, Feldtz, and Luna, who were detectives.

Second, it was after Tapia indicated in the arrest report that Ledesma directed *Green and Gonzalez* to Aderigibhe's location, and the *latter two* officers took Aderigibhe into custody, that Tapia wrote that "We then informed the *remaining* officers of [appellant's] location." (Italics added.) That is, fairly read, the report indicates that the term "remaining officers," by itself, excluded Green and Gonzalez.

Third, the arrest report, fairly read, also indicates that the term "remaining officers" refers to six officers: Mejia, Hoffman, Brown, Chapman, Reyes, and Pozo.

First, by process of elimination of the earlier officers named in the arrest report (Tapia, Ledesma, Green, Gonzalez), the remaining officers are the six officers. Second, we note appellant's written motion expressly sought information from the personnel files of (among other officers) six officers, that is, Mejia, Hoffman, Brown, Chapman, Reyes, and Pozo.

Part of the problem in this case is the vagueness of Tapia's report. An example is his ambiguous use of the term "we" at points in his report. Another example is Tapia's use of the term "remaining officers." It does not expressly identify who the officers are, but leaves the matter to inference. Nonetheless, if Tapia had intended to convey in his arrest report that the term "remaining officers" did not refer to Mejia, Hoffman, Brown, Chapman, Reyes, and Pozo, or that the term referred to a subgroup of these six officers, Tapia should have said so. A defendant makes a *Pitchess* motion largely in response to the allegations, for better or worse, of the police report.

Tapia's vague report states, "We then informed the remaining officers of [appellant's] location. As the [officers] approached [appellant], they observed him throw the black plastic bag in his right hand to the ground." Whatever Tapia may have meant, his report, fairly read, indicates on its face that the "remaining officers" were Mejia, Hoffman, Brown, Chapman, Reyes, and Pozo, and that all six of these officers approached appellant and saw him throw the black plastic bag,

In his supporting declaration, appellant responded to Tapia's arrest report as written. Moreover, using Tapia's term "remaining officers," appellant stated "Officers Tapia and Ledesma then informed the *remaining officers* of [appellant's] location. Now *they* alleged that *they* observed [appellant] thr[o]w the black plastic bag in his right hand to the ground which [appellant] never had a plastic bag from the start falsifying the police report and planted evidence on [appellant]." (Italics added.) Fairly read, appellant here alleged that the "remaining officers" (1) alleged that they saw appellant throw the bag, (2) falsified the police report (and at least falsely suggested that they had seen appellant throw the bag), and (3) planted evidence on him.

In sum, the arrest report indicates that Mejia, Hoffman, Brown, Chapman, Reyes, and Pozo observed appellant throw the plastic bag, which was later determined to contain currency.[2] However, again, appellant, by his declaration, expressly denied that he ever had a plastic bag. Fairly read, his declaration also alleges that the "remaining officers" (Mejia, Hoffman, Brown, Chapman, Reyes, and Pozo) falsified the police report and planted evidence.

Moreover, as to Mejia in particular, the arrest report indicates Mejia recovered from appellant's left hand a clear plastic bindle containing what appeared to be rock cocaine and recovered currency from appellant's pants. However, fairly read, appellant's declaration indicates officers bent his left thumb to open his hand to plant narcotics on him. Respondent concedes appellant alleged that Mejia planted narcotics in appellant's hand.

Further, as to Gonzalez, the arrest report indicates Mejia and Hoffman took appellant into custody and Gonzalez recovered the black plastic bag from the ground. However, appellant's declaration indicates that the officers (including, therefore, Gonzalez) fabricated their description of the events and fabricated evidence.[3]

Further still, appellant did more than merely deny that he sold narcotics, possessed what appeared to be narcotics in his left hand, or discarded the black plastic bag containing currency. Basically, he expressly alleged that "The credibility of each of the

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[2] The arrest report does not indicate that Green observed appellant throwing the plastic bag.

[3] Appellant, in his declaration, indicates that Green came from another location and recovered the black plastic bag from the ground. As mentioned, the arrest report indicates Gonzalez recovered the bag. The thrust of appellant's declaration is that all of the officers were essentially fabricating about anything incriminating to appellant. Accordingly, it appears that in appellant's declaration (1) appellant is merely alleging that, according to the arrest report, Green came from another location and recovered the bag, and (2) appellant erroneously alleged Green instead of Gonzalez as the person who, according to the arrest report, recovered the bag.

named officers is very much at issue . . . ."[4] Moreover, appellant alleged on information and belief that the officers engaged in dishonest and harassing conduct because the area in which officers saw appellant was an area known for blatant narcotics sales and use; therefore, officers falsified accounts of the crime and the police reports "for the purpose of getting him custody or a new arrest, and back to prison." (*Sic*.) Reduced to its essence, appellant effectively alleged that he was innocently at the location and police detained him without cause. Appellant therefore set forth a factual scenario which, if true, established his complete innocence.

Moreover, appellant's scenario was plausible because it was one that "might or could have occurred" (*Warrick, supra*, 35 Cal.4th at p. 1026), that is, it presents an assertion of specific police misconduct that is both internally consistent and supports the defense proposed to the charges. (*Ibid*.) Appellant's version of the facts generally supported his proposed defense that he did not commit the crime and police allegations to the contrary were fabricated. Given those facts, the issues of whether appellant's scenario inspired belief, whether the police report presented a version of events that might have occurred and/or that conflicted with appellant's version, and whether the police version might have been more persuasive than appellant's version, were irrelevant under *Warrick.* (*Id.* at pp. 1024-1026.)

We note that respondent, in his brief, concedes that appellant's motion "asserted he was arrested because he was in the wrong place at the wrong time." Respondent also concedes that appellant "argued that his mere presence in . . . [the known drug] area was the reason he was arrested," appellant "claimed the officers wanted to send him back to prison," and appellant alleged some evidence was planted. We also note that respondent argues any trial court error in denying appellant's *Pitchess* motion was not prejudicial, in part because appellant at trial gave a plausible explanation for being in an area known for

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4 As mentioned, the officers appellant previously had named in his declaration included Tapia, Ledesma, Gonzalez, Mejia, Hoffman, Brown, Chapman, Reyes, and Pozo. (As to Green, see fns. 2 & 3.)

blatant drug sales and use. However, the gist of the explanation which appellant gave at trial and which respondent finds plausible was the gist of appellant's explanation in his declaration.

We conclude appellant made the requisite good cause showing as to Tapia, Ledesma, Mejia, Gonzalez, Brown, Chapman, Reyes, and Pozo to the extent appellant sought information from their personnel files relating to the fabrication of charges, fabrication of evidence, fabrication of reasonable suspicion and/or probable cause, false arrest, perjury, dishonesty, writing of false police reports, and planting of evidence, and, to that extent, the trial court erred by summarily denying appellant's *Pitchess* motion. (Cf. *Warrick, supra*, 35 Cal.4th at pp. 1027-1028.)

However, to the extent appellant sought from the personnel files of the above eight officers, and Hoffman, information relating to racial bias, gender bias, ethnic bias, sexual orientation bias, coercive conduct, a violation(s) of constitutional rights, illegal search and seizure, false or misleading internal reports, including medical reports, and any other evidence of misconduct amounting to moral turpitude, appellant failed to make a good cause showing, his request was overbroad, and the trial court properly denied appellant's *Pitchess* motion. (Cf. *Warrick, supra*, 35 Cal.4th at pp. 1022, 1027-1028; *People v. Hill* (2005) 131 Cal.App.4th 1089, 1096, fn. 7; see *California Highway Patrol v. Superior Court* (2000) 84 Cal.App.4th 1010, 1021.) Similarly, to the extent appellant sought any information from the personnel files of Green (who apparently did not observe the alleged narcotics sale or appellant throw the black plastic bag, and who, according to the arrest report, recovered suspected drugs from Aderigibhe, a matter concerning which appellant would lack personal knowledge), and/or detectives Hodges, Feldtz, and Luna (whose involvement in the incident is unclear), appellant failed to make a good cause showing, his request was overbroad, and the trial court properly denied appellant's *Pitchess* motion.[5]

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[5] Respondent claims appellant's declaration is deficient under Code of Civil Procedure section 2015.5, because the declaration fails to state (1) the place of execution, (2) that the declaration was declared under the laws of the State of California, and (3) that

Finally, there is no need to decide whether the trial court erred to the extent it denied appellant's *Pitchess* motion insofar as it sought information from Hoffman's personnel file relating to the following seven categories: the fabrication of charges, fabrication of evidence, false arrest, perjury, dishonesty, writing of false police reports, or planting of evidence. Appellant conceded during jury argument that Hoffman's entire testimony was the truth. The concession amounted to a judicial admission. (Cf. *People v. Pijal* (1973) 33 Cal.App.3d 682, 697; *People v. Peters* (1950) 96 Cal.App.2d 671, 677; see 1 Witkin, Cal. Evidence (4th ed. 2000) Hearsay, § 100, pp. 802-803.) Insofar as appellant claims the trial court erred to the extent it denied appellant's *Pitchess* motion insofar as it sought information from Hoffman's personnel file relating to the above seven categories, the alleged trial court error was not prejudicial. (Cf. *People v. Samuels* (2005) 36 Cal.4th 96, 110; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

We will reverse the judgment and remand the matter with appropriate directions. (*People v. Johnson* (2004) 118 Cal.App.4th 292, 304-305; *People v. Hustead* (1999) 74 Cal.App.4th 410, 418-423.) We express no opinion as to whether any detectives or officers committed misconduct in this case.

2. *There Is No Need For This Court To Review the Transcript of the In Camera Hearing Regarding the Police Observation Post.*

a. *Pertinent Facts.*

On February 2, 2007, before the jury was sworn, appellant asked the trial court to disclose the observation post from which Tapia and Ledesma observed appellant sell

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the declaration was based on personal knowledge. However, the claim is unavailing because respondent has raised the issue for the first time on appeal. (Cf. *Rader v. Thrasher* (1972) 22 Cal.App.3d, 883, 889.) Moreover, the gravamen of appellant's declaration alleged what he did or did not do, disputing the police account. Such allegations normally would be based on personal knowledge. As to the issue of the place of execution, we note the clerk's transcript reflects that on May 4, 2006, when appellant executed his declaration, he was in custody. (See also fn. 1.) The alleged deficiency is therefore harmless. (Cf. *People v. Flores* (1995) 37 Cal.App.4th 1566, 1574-1575.)

narcotics. The People objected the information was subject to the official information privilege. The court indicated it would conduct an in camera hearing on the issue.

On February 5, 2007, the court conducted the in camera hearing with Ledesma. The court indicated as follows. The court would allow Ledesma to reveal the distance from the observation post to appellant at the time of the surveillance, the elevation of the observation post, its compass direction from appellant, and whether the surveillance was conducted from a window. The court ruled that, pursuant to the official information privilege, the specific location of the observation post would not be disclosed.

b. *Analysis.*

Appellant does not claim the trial court erred, under state or federal law, by (1) concluding that information as to the specific location of the observation post was subject to the official information privilege of Evidence Code section 1040 and, therefore, (2) refusing to disclose the location. (See *People v. Haider* (1995) 34 Cal.App.4th 661, 664-665.) Appellant claims that this Court must review the transcript of the in camera hearing to assure that the trial court did not violate his right to due process by refusing to disclose the location. That is, according to appellant, a review of the transcript of the in camera hearing by this Court is the only way to establish that the trial court did not violate his right to due process. We disagree.

The trial court ruled Ledesma could testify as to several facts which would be pertinent to the credibility of the testimony Tapia and Ledesma concerning their observations. There is no dispute that appellant thoroughly cross-examined Tapia and Ledesma at trial concerning their observations, except that they did not testify as to the specific location of the observation post.

In light of the above circumstances, appellant has failed to demonstrate how the trial court's refusal to disclose the specific location of the observation post could violate appellant's right to due process. Nor has appellant cited any authority holding that, in the circumstances presented here, this Court is obligated, as a matter of procedure, to review the transcript of the in camera hearing to determine whether the trial court violated appellant's right to due process. On this record, appellant has failed to demonstrate that

there is any need for this Court to review the transcript of the in camera hearing to assure that the trial court did not violate his right to due process.

DISPOSITION

The judgment is reversed and the matter is remanded with the following directions. Following remand, and consistent with the views expressed in this opinion, the trial court must conduct an in camera inspection of the requested personnel records of Los Angeles Police Officers Tapia, Ledesma, Mejia, Gonzalez, Brown, Chapman, Reyes, and Pozo for relevance. If the trial court's inspection reveals no relevant information, the trial court must reinstate the judgment of conviction. If the inspection reveals relevant information, the trial court must order disclosure, allow appellant an opportunity to demonstrate prejudice, and order a new trial if there is a reasonable probability the outcome would have been different had the information originally been disclosed. If appellant fails to demonstrate prejudice, the trial court must reinstate the judgment. (Cf. *People v. Johnson*, *supra*, 118 Cal.App.4th at pp. 304-305; *People v. Hustead*, *supra*, 74 Cal.App.4th at pp. 418-423.)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.